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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TORCHMATE, INC.,  
*Plaintiffs*

vs.

PLASMACAM, INC.,  
*Defendants*

**Case No: 3:13-cv-00305**

**COMPLAINT**

**(JURY DEMAND)**

Plaintiff Torchmate, Inc. ("Torchmate") brings this action to recover for the damage caused by, and to prevent further damage arising from Defendant PlasmaCAM Inc.'s ("Defendant") unlawful use of Torchmate's trademark. Defendant's unlawful use of Torchmate's trademark gives rise to the claims asserted in this Complaint including: (1) trademark infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114; (2) false designation of origin and false description and representation under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (3) trademark dilution under § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); and (4) unfair competition, deceptive trade practices, trademark infringement and unjust enrichment arising under the statutes and laws of Nevada.. Torchmate, for its Complaint against Defendant, alleges by and through its attorneys as follows:

**PARTIES**

1  
2 1. Torchmate is a corporation organized and existing under the laws of Delaware,  
3 with a principal place of business at 1170 Trademark, Suite 101, Reno, Nevada 89521. Torchmate  
4 possesses extensive technical information and know-how relating to the development,  
5 manufacture and sale of industrial cutting products and supplies and is the owner of intellectual  
6 property, including certain trademarks, relating to cutting technology.

7 2. On information and belief, Defendant PlasmaCAM, Inc. is a corporation organized  
8 and existing under the laws of the State of Colorado and has its principal place of business at 5112  
9 Graneros Road, Colorado City, Colorado 81019.

**JURISDICTION AND VENUE**

10  
11 3. This is an action arising under the trademark laws of the United States. This Court  
12 has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338 and 1367, and 15 U.S.C. § 1121.

13 4. This Court has personal general jurisdiction over Defendant because the Defendant  
14 conducts business in and throughout the State of Nevada by, among other things, offering for sale,  
15 selling and distributing products into Nevada. The Court has specific jurisdiction over the  
16 Defendant because Defendant has caused and continues to cause tortious injury to Torchmate in  
17 the State of Nevada and Torchmate's claims arise out of Defendant's contacts with the State of  
18 Nevada.

19 5. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c).

**FACTUAL ALLEGATIONS AND BACKGROUND**

**The Torchmate Trademark**

20  
21  
22 6. Torchmate is an industry leader in the design, development and manufacture of  
23 metal cutting systems, components and supplies, among other things. As a result of the  
24 Torchmate's efforts over the years, Torchmate is a leading supplier of cutting products in the  
25 United States, selling to all categories of consumers, including industrial, professional and small  
26 business manufacturers. These consumers identify Torchmate as the source of these cutting  
27 products.

28 7. The "Torchmate" name and the Torchmate Trademark listed in paragraph #9 below

1 have become associated with Torchmate's corporate identity and serves as an indication of source  
2 for products made and sold by Torchmate and the high quality standards to which those products  
3 are made.

4 8. Due to this association, Torchmate, which greatly values its intellectual property,  
5 applied for and received trademark protection under Section 2(f) of the Lanham Act, including the  
6 Torchmate Trademark listed in paragraph #9 below.

7 9. Torchmate is the owner of U.S. Trademark Registration No. 3,480,449 (the  
8 "Torchmate Trademark"), which was duly and lawfully registered on August 5, 2008. The  
9 Torchmate Trademark is a standard character trademark and is associated with cutting machines  
10 and devices using pantograph or coordinate drive mechanisms and parts and components  
11 therefore. A true and correct copy of the Torchmate Trademark registration is attached hereto as  
12 Exhibit A. Torchmate is the owner of all right, title and interest in the Torchmate Trademark and  
13 has the right to sue and recover damages for infringement of this mark.

14 10. Torchmate has also expended substantial sums of money and time in the  
15 development, advertising, and promotion of the Torchmate Trademark. As a result, the Torchmate  
16 Trademark has achieved enormous recognition and corresponding good will within the cutting  
17 industry and has come to be recognized and relied on by the trade as identifying products  
18 originating exclusively with Torchmate, being of very high quality, and recognized as a leading  
19 brand in the industry. The Torchmate Trademark is a strong and famous mark.

20 11. Through its extensive advertising campaigns and through its production and sale of  
21 consistently high quality cutting industry products, Torchmate has established the Torchmate  
22 Trademark as a valuable, prominent, and famous trademark in the cutting industry.

23 **DEFENDANTS' UNLAWFUL USE OF THE**  
24 **TORCHMATE TRADEMARK**

25 12. On information and belief, Defendant has purchased the Torchmate Trademark as a  
26 sponsored advertising keyword on internet based search websites, such as Google. This  
27 unauthorized use of the Torchmate Trademark causes Defendant's website URL to appear on  
28 internet based search webpages as a sponsored advertisement, including for example on Google  
based searches. The selection of Defendant's URL on the Google search page leads directly to

1 Defendant's webpage, which offers goods and services that directly compete with Torchmate and  
2 Torchmate's goods and services protected under, and associated with, the Torchmate Trademark.  
3 An example of Google search page with Defendant's advertisement is attached as Exhibit B.

4 13. Torchmate has never and does not now sponsor, endorse, authorize or permit  
5 Defendants' use of the Torchmate Trademark.

6 14. On information and belief, Defendant has knowledge and notice of the Torchmate  
7 Trademark and Torchmate's rights, goodwill, and valuable reputation in and to this trademark.  
8 Defendant has used and continue to use the Torchmate Trademark for the purpose of taking  
9 advantage of Torchmate's goodwill and valuable reputation in the these marks, and to convey that  
10 its products are made of the same high quality and standards associated with products made and  
11 sold by Torchmate. By using the Torchmate Trademark, Defendant is creating a belief in the  
12 public that it and its products are associated with Torchmate and is therefore misappropriating  
13 Torchmate's goodwill and reputation.

14 15. Defendant's actions are willful, wanton, and in deliberate disregard of Torchmate's  
15 rights, and are done to cause confusion, and make this an exceptional case.

16 16. Torchmate has been and will continue to be irreparably harmed by Defendant's  
17 illegal and unauthorized use of the Torchmate Trademark and by Defendant's acts of  
18 infringement, dilution, false advertising and unfair competition.

19 17. Torchmate has no adequate remedy at law.

20 **COUNT I**  
21 **(Infringement of Federally Registered Trademark – 14 U.S.C. § 1114)**

22 18. Torchmate incorporates by reference the allegations set forth in the preceding  
23 paragraphs as though fully set forth herein.

24 19. This claim arises pursuant to 15 U.S.C. § 1114, Section 32 of the Lanham Act, for  
25 infringement of Torchmate's federally registered Torchmate Trademark.

26 20. After the adoption, use and registration by Torchmate of the Torchmate Trademark,  
27 Defendant adopted and began using the mark in commerce without the authorization of  
28 Torchmate. Defendant's conduct is willful and with full knowledge of Torchmate's prior use of  
and rights to the Torchmate Trademark.

21. Defendant's use of the Torchmate Trademark in connection with its cutting products is a violation of Torchmate's rights and constitutes infringement of the Torchmate Trademark, because such use is likely to cause confusion, mistake, and deception of consumers as to the source of Defendant's goods and services in light of the Torchmate Trademark.

22. Upon information and belief, Defendant's conduct is intentional and willful, and Defendant's acts have been and are being committed with the intent and purpose of misappropriating the goodwill of Torchmate.

23. Torchmate has been, is, and will continue to be irreparably harmed by Defendant's unauthorized use of the Torchmate Trademark. In particular, because of Torchmate's inability to regulate either the conditions of the products sold or the advertisements of Defendant, Defendant's unauthorized use of Torchmate's mark will cause injury to the valuable reputation and goodwill Torchmate has developed in this trademark.

24. As a direct and proximate result of Defendant's violation of Torchmate's trademark rights, Torchmate has been damaged by a loss of profits and sales. Further, Defendant has benefited by its continued unauthorized use of the Torchmate Trademark, thereby realizing profits and sales it would not otherwise have obtained. Torchmate has also incurred attorneys' fees and costs to bring the present action.

25. Defendant is now committing the acts alleged above and has refused to cease committing those acts after due notice of Torchmate's rights. Unless Defendant is enjoined from continuing its wrongful acts, Torchmate will continue to be immediately and irreparably harmed.

26. Torchmate has no adequate remedy at law, and the balance of the equities favors Torchmate.

**COUNT II**  
**(False Designation of Origin – 15 U.S.C. §1125(a)(1)(A))**

27. Torchmate incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

28. This Count arises under 15 U.S.C. § 1125(a), Section 43(a) of the Lanham Act, for false designation, description, and representation of goods and services as to their nature and origin.



39. Defendant's use of Torchmate Trademark blurs and tarnishes and thereby dilutes the Torchmate Trademark.

40. Torchmate has no adequate remedy at law, and the balance of the equities favor Torchmate.

**COUNT IV**  
**(Common Law Unfair Competition)**

41. Torchmate incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

42. Defendant's acts constitute unfair competition and misappropriation of Torchmate's name, business reputation and good will, under the common law of the State of Nevada.

43. Defendant's acts are intended to attract attention to Defendant's products and thereby gain a commercial advantage by attracting business by the use of Torchmate's goodwill.

44. Defendant's activities have caused and will cause irreparable harm, damage, and injury to Torchmate, for which Torchmate has no adequate remedy at law.

45. The activities of Defendant has damaged, are damaging, and will continue to damage Torchmate in an amount as yet undetermined.

**COUNT V**  
**(Attorneys' Fees)**

46. Torchmate incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

47. Torchmate is entitled to recover its attorneys' fees and expenses pursuant to 15 U.S.C. § 1117 because Defendant's infringement is malicious, fraudulent and deliberate.

**PRAYER FOR RELIEF**

WHEREFORE, Torchmate prays for the following relief:

1. That the Court enter Judgment in favor of Torchmate and against Defendant on each of Torchmate's claims;

1           2.     A permanent injunction enjoining Defendant and its officers, agents, owners,  
2 employees, confederates, attorneys and any persons in active concert or participation with them  
3 from:

4                 a.     Using the Torchmate Trademark, or any other confusingly similar  
5 trademarks or trade dress, in connection with the advertising, manufacturing, offering for sale,  
6 distribution or sale of cutting products and services;

7                 b.     Using the Torchmate Trademark, or any other confusingly similar  
8 trademarks or trade dress, in a manner that it likely to dilute the distinctiveness of the Torchmate  
9 Trademark;

10                c.     Committing any other acts calculated to cause actual or potential purchasers  
11 to believe that Torchmate is the source or sponsor of Defendant's goods;

12                d.     Shipping, delivering, printing, ordering, importing, distributing, returning,  
13 transferring, destroying, or otherwise moving or disposing of in any manner such cutting products  
14 and/or other goods, packaging, or other material falsely bearing or intended to bear the Torchmate  
15 Trademark or any reproduction, counterfeit, copy, or colorable imitation of the Torchmate  
16 Trademark; and

17                e.     Assisting, aiding, or abetting any supplier, distributor or any other person or  
18 business entity in engaging in or performing any of the activities referred to in the above  
19 subparagraphs a through d;

20           3.     That the Court issue a permanent injunction under Counts I through IV including,  
21 but not limited to, an Order enjoining Defendant from using any trademarks, trade dress or other  
22 proprietary marks, symbols, designs, or logos of Torchmate;

23           4.     That within 5 days from the date of such Order, Defendant must remove the  
24 Torchmate Trademark or any other proprietary mark of Torchmate from any listing of sponsored  
25 advertising on the internet or via any electronic media in which Defendant advertises, from  
26 exterior signs or advertisement containing the Torchmate Trademark or any other proprietary mark  
27 of Torchmate from Defendant's places of business, and Defendant shall remove all other items  
28 used by Defendant in connection with the operation of its business which contain the Torchmate



1 Trademark or Torchmate's other proprietary marks and names, including but not limited to cutting  
2 products, signs, pictures, advertisements and flyers, from Defendant's premises and placed in  
3 storage and be made available to Torchmate for inspection and destruction, and that Defendant be  
4 ordered to list the Torchmate Trademark as a negative word in any listing of sponsored advertising  
5 on the internet or via any electronic media in which Defendant advertises;

6 5. That Torchmate recovers its damages under Counts I through IV incurred as a  
7 result of Defendant's continued unauthorized use of the Torchmate Trademark, including without  
8 limitation the revenues and profits received by Defendant from its use of such mark;

9 6. That Torchmate recovers under Count V its reasonable attorneys' fees and  
10 expenses incurred in connection with bringing this action;

11 7. That all costs of this action be charged against Defendant;

12 8. Find Defendant's conduct to be willful and wanton;

13 9. That Defendant's actions be found exceptional and that Torchmate be awarded  
14 damages equal to three times its actual or compensatory damages caused by the intentional  
15 wrongful acts of Defendant, together with Defendant's profits from the sales of product acquired  
16 as a result of their unlawful use of the Torchmate Trademark or any colorable imitation thereof  
17 and any other remedy provided under 15 U.S.C. § 1117 or the laws of the State of Nevada;

18 10. As the result of Defendant's unlawful, willful, and malicious conduct, that  
19 Torchmate be awarded exemplary and punitive damages and the costs of this action, together with  
20 reasonable attorneys' fees;

21 11. That Defendant be required, in accordance with 15 U.S.C. §1115, to file with this  
22 Court and serve on Torchmate's undersigned counsel within thirty (30) days from the date of entry  
23 of any injunction, a report in writing, under oath, setting forth in detail the manner and form in  
24 which Defendant has complied with the terms of the injunction; and

25 12. Such other and further relief as the Court deems just, proper, and equitable.  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Torchmate demands a jury trial on all issues so triable.

Dated: June \_\_, 2013

By: /s/ Michael J. McCue

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